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*Attorneys for Defendants Walmart Inc.;
Inland Diversified Las Vegas Eastern
Beltway, LLC; The Inland Real Estate Group,
LLC; and The Inland Real Estate Investment Corporation*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LILIA JARRELL, an individual,

Plaintiff,

v.

WAL-MART STORES, INC.; WALMART
INC. d/b/a WALMART #2593; INLAND
DIVERSIFIED LAS VEGAS EASTERN
BELTWAY, LLC; THE INLAND REAL
ESTATE GROUP, LLC a/k/a THE INLAND
REAL ESTATE GROUP, INC.; THE INLAND
REAL ESTATE INVESTMENT
CORPORATION; DOES 1 through 100 and
ROE CORPORATIONS 1 through 100,
inclusive,

Defendants.

Case No.:

[District Court, Clark County Case No.: **A-18-774158-C**, Dept. No.: 17]

**DEFENDANTS' PETITION FOR
REMOVAL OF CIVIL ACTION**

[JURY DEMAND]

COME NOW Petitioners WALMART INC. (erroneously named as both WAL-MART
STORES, INC. and WALMART, INC. d/b/a WALMART #2593), INLAND DIVERSIFIED LAS
VEGAS EASTERN BELTWAY, LLC; THE INLAND REAL ESTATE GROUP, LLC a/k/a THE
INLAND REAL ESTATE GROUP, INC.; THE INLAND REAL ESTATE INVESTMENT
CORPORATION, by and through their attorneys, the law offices of PHILLIPS, SPALLAS &
ANGSTADT, LLC, and hereby submit and respectfully show:

I.

Petitioners WALMART, INC. (“Walmart”), INLAND DIVERSIFIED LAS VEGAS EASTERN BELTWAY, LLC, THE INLAND REAL ESTATE GROUP, LLC a/k/a THE INLAND REAL ESTATE GROUP, INC., and THE INLAND REAL ESTATE INVESTMENT CORPORATION are Defendants in the above-entitled action.

II.

This is an action where Plaintiff alleges she slipped and fell on liquid while in a Walmart in Las Vegas, Nevada. On June 7, 2018, Plaintiff served a Petition for Request for Exemption from Arbitration wherein she itemized \$232,011.39 in past medical expenses to date purportedly arising from the Walmart incident. As a result, the amount in controversy requirement is met. Moreover, in light of diversity of citizenship between the parties, this Court may exercise subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1332.

III.

The above-entitled action was commenced on May 10, 2018 in the Eighth Judicial District Court in and for Clark County, District of Nevada, and is now pending in that Court. True and correct copies of the Complaint and Summons are attached hereto as Exhibit A (“Ex. A”) and Exhibit B (“Ex. B”), respectively. Declaration of Ryan Kerbow, ¶ 2 (“Decl. Kerbow”). Defendant Walmart, Inc. filed its Answer on June 5, 2018. Defendants Inland Diversified Las Vegas Eastern Beltway, LLC, The Inland Real Estate Group, LLC, and The Inland Real Estate Investment Corporation filed their Answer on June 25, 2018. True and correct copies of Defendants’ Answers are attached hereto as Exhibit C (“Ex. C”). Decl. Kerbow, ¶ 3. On June 7, 2018, Plaintiff served a Petition for Request for Exemption from Arbitration wherein she indicated she is seeking a total special damages award of \$232,011.39 allegedly incurred as a result of her fall in a Walmart store. A true and correct copy of that document is attached hereto as Exhibit D (“Ex. D”). Decl. Kerbow, ¶ 3.

IV.

This Petition is timely filed pursuant to 28 U.S.C. § 1446(b).

V.

This is a civil action over which this Court has jurisdiction pursuant to 28 U.S.C. § 1332(a), and is one which may be removed to this Court by Petitioner pursuant to 28 U.S.C. § 1441(a).

VI.

Petitioners are informed, believe, and thereon allege that Plaintiff Lilia Jarrell is, and was at the time this action was commenced, a citizen of the State of Nevada.

VII.

Petitioner Walmart, Inc. is, and was at the time this action was commenced, a Delaware corporation with its principal place of business in the State of Arkansas. Petitioner is therefore a citizen of the State of Delaware and a citizen of the State of Arkansas. Petitioners INLAND DIVERSIFIED LAS VEGAS EASTERN BELTWAY, LLC and THE INLAND REAL ESTATE INVESTMENT CORPORATION are foreign entities. THE INLAND REAL ESTATE GROUP, LLC a/k/a THE INLAND REAL ESTATE GROUP, INC. is a domestic corporation.

VIII.

Defendant has fraudulently named as defendants INLAND DIVERSIFIED LAS VEGAS EASTERN BELTWAY, LLC, THE INLAND REAL ESTATE GROUP, LLC a/k/a THE INLAND REAL ESTATE GROUP, INC., and THE INLAND REAL ESTATE INVESTMENT CORPORATION for the sole purpose of defeating diversity. Plaintiff alleges that these Defendants were owners/landlords of the real property that constitutes the location of the subject Walmart store. However, it is well established that, in a landlord/tenant situation, “the breach of duty and liability are generally the tenant’s or lessee’s, and not those of the landlord or lessor, in the absence of a statute stating otherwise...A lessee or tenant having control of leased premises is deemed, so far as third

1 persons or the public are concerned, to be the owner.” 62 Am. Jur. 2d Premises Liability Section 13.
2 *See also* 62 Am. Jur. 2d Premises Liability Section 3, citing *Simms v. Kennedy*, 74 Fla. 411, 76 So.
3 739 (1917); *Lashway v. King*, 179 A.D.2d 919, 578 N.Y.S.2d 702 (3d Dept. 1992); *Coleman v.*
4 *Equitable Real Estate Investment Management, Inc.*, 971 S.W.2d 611 (Tex. App. Dallas 1998), and
5 *Starns v. Lancaster*, 553 S.W.2d 696 (Ky. Ct. App. 1977). In *Wright v. Schum*, 105 Nev. 611 (1989),
6 the Nevada Supreme court applied the rule that “...once a lessee [has] taken possession of property, a
7 landlord is not subject to liability...[to] others coming onto the land, for physical harm caused by a
8 dangerous condition on the premises.” *Id.* (relieving a landlord from any duty owed to a third party
9 unless the landlord undertook maintenance or otherwise exercised control over the premises.) Thus,
10 the owner of the real property wherein the subject Walmart store is located has no duties to the
11 Plaintiff under Nevada premises liability law.
12

13
14 IX.

15 The above-entitled civil action is for personal and economic damages Plaintiff allegedly
16 incurred from an incident at a Walmart store in Las Vegas, Nevada.

17 X.

18 A copy of Defendants’ Petition For Removal Of Civil Action, seeking removal of the above-
19 entitled action to the United States District Court, District of Nevada, together with a copy of the
20 Summons and Complaint, have been deposited with the Deputy Clerk in the County Clerk’s office for
21 the Eighth Judicial District Court in and for Clark County, Nevada. Decl. Kerbow, ¶ 4.
22

23 XI.

24 True and correct copies of all pleadings and papers served upon Petitioners in the above-
25 entitled action are filed herewith.

26 XII.

27 On June 7, 2018, Plaintiff served a Request for Request for Exemption from Arbitration
28

wherein she indicated she is seeking a total special damages award of \$232,011.39 for alleged injuries allegedly sustained in a slip and fall incident at a Walmart store. A true and correct copy of that document is attached hereto as Exhibit D (“Ex. D”). Decl. Kerbow, ¶ 3. Accordingly, the Request for Exemption from Arbitration was the “first paper” from which the amount in controversy may be ascertained in the above-entitled action, as Plaintiff’s claimed damages exceed the jurisdictional requirement. Decl. Kerbow, ¶ 5; 28 U.S.C. § 1446(b); 28 U.S.C. § 1332(a); *Singer v. State Farm Mut. Auto Ins. Co.*, 116 F. 3d 373, 377 (9th Cir. 1997) (holding the “court may consider facts in a removal petition, and may require parties to submit summary-judgment-type evidence” to determine the amount in controversy).

PRAYER

WHEREFORE, Defendants pray that the above-entitled action be removed from the Eighth Judicial District Court in and for Clark County, Nevada, to this Court.

DATED this 3rd day of July, 2018.

PHILLIPS, SPALLAS & ANGSTADT LLC

/s/ Ryan Kerbow

 RYAN KERBOW
 Nevada Bar No. 11403
 504 South Ninth Street
 Las Vegas, Nevada 89101
 (702) 938-1510

*Attorneys for Defendants Walmart, Inc.;
 Inland Diversified Las Vegas Eastern
 Beltway, LLC; The Inland Real Estate Group,
 LLC; and The Inland Real Estate Investment Corporation*

DECLARATION OF RYAN KERBOW

[illegible]

I, Ryan Kerbow, declare under penalty of perjury that the foregoing is true and correct:

1. I am an attorney, duly licensed and authorized to practice law within the courts of the State of Nevada.

2. I am an attorney in the law firm of PHILLIPS, SPALLAS & ANGSTADT LLC representing all defendants in the case of *Lilia Jarrell v. Walmart, Inc., et al.*, pending in the Clark County District Court, Case No. A-18-774158-C, filed in Department No. 17 of the Eighth Judicial District Court, in and for Clark County, Nevada. True and correct copies of Plaintiff's Complaint and Summons are attached hereto as **Exhibit A** and **Exhibit B**, respectively. I have prepared and read the foregoing Request For Removal Of Civil Action and know the matters set forth to be true and correct to the best of my knowledge and belief.

3. The above-entitled action was commenced on May 10, 2018 in the Eighth Judicial District Court in and for Clark County, District of Nevada, and is now pending in that Court. Defendant Walmart, Inc. filed its Answer on June 5, 2018. Defendants Inland Diversified Las Vegas Eastern Beltway, LLC, The Inland Real Estate Group, LLC, and The Inland Real Estate Investment Corporation filed their answer on June 25, 2018. True and correct copies of Defendants' Answers are attached hereto as **Exhibit C**. On June 7, 2018, Plaintiff served a Petition for Request for Exemption from Arbitration wherein she indicated she is seeking a total special damages award of \$232,011.39 for injuries allegedly sustained at a Walmart store in Las Vegas, Nevada. A true and correct copy of that document is attached hereto as **Exhibit D**.

4. On July 2, 2018, I caused to be filed with the County Clerk of the Eighth Judicial District Court, in and for Clark County, Nevada, a Notice Of Removal To Federal Court, seeking removal of the above-mentioned action to the United States District Court, District of Nevada.

1 together with a true and correct copy of this Petition For Removal Of Civil Action attached as **Exhibit**
 2 **D**, by depositing such copy with the Deputy Clerk in the County Clerk's Office, Clark County
 3 Courthouse, 200 Lewis Avenue, Las Vegas, Nevada 89101.

4
 5 5. This Petition is filed with this Court within thirty (30) days after service of Plaintiff's
 6 Request for Exemption from Arbitration, which is the "first paper" from which the amount in
 7 controversy may be ascertained in the above-entitled action. *See* 28 U.S.C. §1446(b). Plaintiff's
 8 Petition for Exemption from Arbitration indicates she is seeking a total special damages award of
 9 \$232,011.39 for alleged injuries allegedly sustained in a slip and fall incident in a Walmart store in
 10 Las Vegas, Nevada. Therefore, Plaintiff's claimed damages exceed the jurisdictional requirement. *See*
 11 Ex. D; 28 U.S.C. §1332(a); *Singer v. State Farm Mut. Auto Ins. Co.*, 116 F. 3d 373, 377 (9th Cir.
 12 1997) (holding the "court may consider facts in a removal petition, and may require parties to submit
 13 summary-judgment-type evidence" to determine the amount in controversy).
 14

15 6. I caused to be served copies of the Notice of Removal to Federal Court and the Petition
 16 For Removal Of Civil Action upon Plaintiff by depositing them in the United States Mail, on July 2,
 17 2018, in an envelope properly addressed, with sufficient postage affixed, to:

18 NAQVI INJURY LAW
 19 9500 West Flamingo Road, Suite 104
 20 Las Vegas, Nevada 89147

21 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is
 22 true and correct.

23 Executed this 3rd day of July, 2018

24 /s/ Ryan Kerbow

25

RYAN KERBOW

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of July, 2018 I served a true and correct copy of the foregoing **DEFENDANTS' PETITION FOR REMOVAL OF CIVIL ACTION** by U.S. Mail, in a sealed envelope, first-class postage fully prepaid, addressed to the following counsel of record, at the address listed below:

ATTORNEY OF RECORD	PHONE/FAX	PARTY
NAQVI INJURY LAW 9500 West Flamingo Road, Suite 104 Las Vegas, Nevada 89147	Phone (702) 553-1000 Fax (702) 553-1002	Plaintiff

/s/ Ryan Kerbow

An Employee of PHILLIPS, SPALLAS & ANGSTADT LLC